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Attorney for Petitioner LaMarr Crowder

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Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
EFP MOTION FILED	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
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FILED

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CLERK US DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

LAMARR RASHID CROWDER,

Petitioner,

v.

JAMES E. TILTON, Secretary, California
 Department of Corrections and
 Rehabilitation,

Respondent.

Civ. No. 08CV

'08 CV 0694 DMS JMA

PETITION FOR WRIT OF
 HABEAS CORPUS UNDER
 28 U.S.C. § 2254 BY A
 PERSON IN STATE CUSTODY

PETITION

This petition is in the same format and responds to all the questions contained in this Court's recommended form, dated January, 2006, located on the Court's website:

//

1. The name and location of the court which entered the judgment of conviction under attack is the Superior Court of San Diego, Central Judicial District, Department 28, 220 West Broadway, San Diego, California, 92101.

//

2. The petitioner was convicted of one count of first degree murder, in violation of California Penal Code § 187(a); and one count of shooting into an inhabited vehicle, in violation of California Penal Code § 246. There were also true findings on each counts that he personally used a firearm that caused death, in violation of California Penal Code §§

CR

1 1192.7(c))(8), 12022.53(a)(1), and 12022.53(d). The judgment of conviction was imposed
2 on April 29, 2005, when the petitioner was sentenced prison two consecutive prison terms
3 of twenty-five years to life.

4 //

5 3. The case number of the judgment of conviction being challenged is SCD175644.

6 //

7 4. The sentence imposed consists of an indeterminate prison term of twenty-five
8 years to life for first degree murder and shooting into an inhabited vehicle, followed by a
9 consecutive indeterminate prison sentence of twenty-five years to life for personal use of a
10 firearm that caused death.

11 //

12 5. The sentence commenced the day the petitioner was arrested, June 24, 2003.
13 There is no projected release date.

14 //

15 6. The petitioner was convicted of first degree murder, in violation of California
16 Penal Code § 187(a); and shooting into an inhabited vehicle, in violation of California Penal
17 Code § 246. The jury also made true findings that the petitioner personally used a firearm
18 during the commission of a murder that caused death, in violation of California Penal Code
19 §§ 1192.7(c)(8), 12022.53(a)(1), and 12022.53(d)

20 //

21 7. The petitioner pled not guilty to all counts of conviction.

22 //

23 8. The petitioner was convicted after a jury trial.

24 //

25 9. The petitioner did not testify at trial.

26 //

27 **DIRECT APPEAL**

28 10. The judgment and conviction were appealed to the California Court of Appeal,

1 Fourth Appellate District, Division One.

2 //

3 11. The convictions and sentences were affirmed by that Court in case number
4 D046701, in an unpublished decision, on September 18, 2006, by Justices Irion, Nares, and
5 McIntyre. The petitioner raised the following five issues on direct appeal:

6 a. Whether the trial court erred in excluding evidence of prior sex
7 charges that had been dismissed against a testifying informant?

8 b. Whether the trial court erred in denying the motion for new trial
9 based upon undisclosed, newly discovered evidence?

10 c. Whether the trial court erred in admitting a partial, and misleading,
11 transcript of an incomprehensible video and audio surveillance tape of the
12 petitioner while he was at work?

13 d. Whether the cumulative errors in this case require reversal?

14 e. Whether CALJIC 2.90 is constitutionally deficient, because it failed
15 to inform the jury that in order to find the petitioner guilty, the prosecution
16 must prove each element beyond a reasonable doubt?

17 //

18 12. On January 17, 2007, the California Supreme Court denied the Petition for
19 Review in case number S147703 from the affirmance by the California Court of Appeal in
20 case number D046701. The petitioner raised the following three issues in the Petition for
21 Review:

22 a. Whether the "doctrine of completeness" as codified in California
23 Evidence Code § 356 operates as a rule of admission only to give a complete
24 context of a statement, or also operates to exclude a incomplete statement
25 were the entire context cannot be determined?

26 b. Whether the trial court erred in excluding evidence of prior sex
27 charges that had been dismissed against the informant?

28 c. Whether the trial court erred in denying the motion for new trial

1 based upon undisclosed, newly discovered evidence?

2 //

3 13. The petitioner did not file a Petition for Writ of Certiorari to the United States
4 Supreme Court.

5 //

6 **COLLATERAL REVIEW IN STATE COURT**

7 //

8 Questions 14 - 19. The petitioner did not file a petition for writ of habeas corpus in
9 any of the California Courts.

10 //

11 20. The petitioner did not file a petition for writ of habeas corpus in the California
12 Supreme Court because there appear to be no issues outside the record of the direct appeal
13 that would effect his convictions or sentence.

14 //

15 21. This is the first federal petition for writ of habeas corpus challenging the
16 petitioner's convictions in Superior Court case number SCN177421.

17 //

18 **22. GROUNDS FOR RELIEF**

19 **A. Ground one: denial of the right to confront and cross-examine a critical**
20 **prosecution witness, in violation of the Sixth and Fourteenth Amendment**
to the United States Constitution.

21 Petitioner's convictions and sentences for murder and shooting into an inhabited
22 vehicle are unlawful because at trial he was denied the right to confront and cross-examine,
23 as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution as
24 interpreted by United States Supreme Court in *Davis v. Alaska*, 415 U.S. 308 (1974), an
25 informant who testified for the prosecution that the petitioner had admitted to shooting the
26 deceased.

27 **Supporting facts:**

28 Prior to trial, the petitioner sought to admit evidence that in 1997, William Jimmerson,

1 an informant who testified for the prosecution that the petitioner admitted to him that he shot
2 and killed the deceased, had been charged with sex crimes involving a fourteen year old girl.
3 These included sodomy with a child under the age of 16 by a person over the age of 21, oral
4 copulation with a child under the age of 16 by a person over the age of 21, and statutory
5 rape. These charges were dismissed, and Jimmerson had been convicted of pandering only
6 and sentenced to five years in prison. The prosecution, in opposing the admission of this
7 evidence, noted that the underlying facts of the pandering charge was that Jimmerson was
8 introduced to the victim because she was the fourteen year old sister of a former cellmate.
9 When released from jail on an unrelated charge, Jimmerson met her and they had consensual
10 sexual relations and she agreed to work for him as a prostitute. The defense argued that the
11 admission of these dismissed charges was relevant to assess the credibility of Jimmerson as
12 an jailhouse informant, beyond that of regular witness, because the dismissed sex charges
13 could still be revived.

14 The trial court excluded the evidence pursuant to California Evidence Code § 352, on
15 the basis that the prior charges were not convictions and they were too speculative to be
16 relevant. The California Court of Appeal affirmed that ruling, finding the trial court was
17 within its discretion to exclude the evidence under Evidence Code § 352. That Court also
18 found there was no evidence that the prior dismissed charges would be revived against
19 Jimmerson as an incentive for him to cooperate, and no evidence or argument had been
20 presented to the trial court to show the circumstances of the pandering charges were relevant
21 to show how Jimmerson had exploited information received from another cellmate for his
22 own personal, and illegal, advantage. The petitioner raised this ground in his Petition for
23 Review before the California Supreme Court in case number S147703, which was denied
24 on January 17, 2007, without comment [Petitioner's Exhibit A].

25 //

26 **B. Ground Two: the petitioner was denied due process of law, as**
27 **guaranteed by the Fourteenth Amendment to the United States**
28 **Constitution, and as interpreted by the United States Supreme Court in**
***Brady v. Maryland*, 373 U.S. 83, 87 (1963), as a result of the failure of the**
prosecution to disclose material evidence that would have impeached the

1 informant who testified the petitioner admitted to him that he had shot and
2 killed the deceased

3 **Supporting facts:**

4 After the petitioner was convicted, the defense moved for a new trial on the basis of
5 undisclosed information concerning William Jimmerson, the informant who testified for the
6 prosecution that the petitioner admitted to him that he had shot and killed the deceased. The
7 basis from the motion was that another inmate with Jimmerson in the San Diego County Jail
8 had heard him say prior to the petitioner's trial that he "just had to get [his] mark" to make
9 his case better and that he "got a little story" with his own spin on it that he had thrown to
10 the prosecution and they had taken it. A second inmate also submitted a declaration that
11 Jimmerson had this "fairy tale" he was putting out there and that Jimmerson used his *pro per*
12 status to gain the trust of other inmates. Another declaration from a deputy sheriff with San
13 Diego County also stated that Jimmerson appeared to intentionally start a fight in order to
14 be moved to a different floor, and that in the opinion of the deputy this was to protect himself
15 from injury because of prior charges of rape or child molestation.

16 The trial court denied the motion, in part because it found the evidence presented at
17 the motion for new trial would not have been material as to the outcome of the case, and
18 therefore the petitioner failed to show a violation of due process of law under *Brady v.*
19 *Maryland*, 373 U.S. 83 (1963). The California Court of Appeal affirmed that ruling. The
20 trial court also found that Jimmerson's credibility was not central to the case or that a
21 different result would have occurred had the newly discovered evidence been presented to
22 the jury. The California Court of Appeal affirmed that ruling. The petitioner raised this
23 ground in his Petition for Review before the California Supreme Court in case number
24 S147703, which was denied on January 17, 2007, without comment [Petitioner's Exhibit A].

25 //

26 Questions 23 - 24. No other petition or appeal from the petitioner's convictions and
27 sentence in SCD175644 is pending in any state or federal court.

28 //

1 25. The attorneys who represented petitioner at the following stages were:

2 (a) Preliminary Hearing: Jonathan Jordan, 2552 F Street, San Diego,
3 California, 92102, as retained counsel;

4 //

5 (b) Arraignment or plea: same as above;

6 //

7 (c) Jury trial: same as above;

8 //

9 (d) Sentencing: same as above;

10
11 (e) On direct appeal to the California Court of Appeal and the
12 California Supreme Court, the petitioner was represented by John Lanahan,
13 550 West C Street, Suite 1670, San Diego, CA 92101, as appointed counsel;

14 //

15 (f) The petitioner has not filed any petition for writ of habeas corpus in
16 any California Court prior to the filing of this petition.

17 //

18 26. The petitioner was sentenced on one count of first degree murder and the firearm
19 enhancement. The sentence for shooting into an inhabited vehicle was stayed pursuant to
20 California Penal Code § 654.

21 //

22 27. There is no future sentence the petitioner must serve in addition to the sentence
23 imposed in SCD 177421.

24 //

25 28. The petitioner does NOT consent to having all proceedings decided by the
26 magistrate judge.

27 //

1 Wherefore, Petitioner prays that the Court grant him relief to which he may be entitled
2 in this proceeding.

3
4 I declare under penalty of perjury that the foregoing is true and correct. Executed on

5
6 A April 16, 2008


LAMARR RASHAD CROWDER,
Petitioner

8
9 DATED: April 16, 2008

Respectfully submitted,

10
11 
John Lanahan,
CA Bar Number 133091
550 West C Street, Suite 1670
San Diego, CA 92101-8557
(619) 237-5498
FAX: (619) 237-8898
E-mail: lawnanah@sbcglobal.net

Attorney for Petitioner

16 c:\myfiles\habeas\federal\crowder.l.2254.initial.jol

PETITIONER'S EXHIBIT A

Court of Appeal, Fourth Appellate District, Div. 1 - No. D046701
S147703

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

LAMARR CROWDER, Defendant and Appellant.

Petition for review DENIED.

Moreno, J., was absent and did not participate.

SUPREME COURT

FILED

JAN 17 2007

Frederick K. Chlrich Clerk

Deputy

GEORGE.

Chief Justice

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LAMARR RASHAD CROWDER,)	Civil No. 08cv
)	
Petitioner,)	PROOF OF SERVICE
)	
v.)	
)	
JAMES E. TILTON, Secretary,)	
California Department of)	
Corrections,)	
)	
Respondent.)	
_____)	

I, the undersigned, say:

1) That I am over eighteen years of age, a resident of the County of San Diego, State of California, and not a party in the within action;


2) That my business address is 550 West C Street, Suite 1670, San Diego, California, 92101-8557;

3) That I served the within PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254 BY A PERSON IN STATE CUSTODY to be delivered an original and one copy thereof to the Office of the Clerk, 880 Front Street, San Diego, California, 92101;

4) That I mailed a copy to the Additional Respondent, Edmund G. Brown, Attorney General of the State of California, P.O. Box 85266, San Diego, CA 92186-5266;

5) I have also caused a copy of the petition to be delivered to the petitioner

I certify under penalty of perjury that the foregoing is true and correct. Executed on April 16, 2008, at San Diego, California.



JOHN LANAHAN

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

LaMarr Rashad Crowder

(b) County of Residence of First Listed Plaintiff Imperial

(EXCEPT IN U.S. PLAINTIFF CASES)

'08 CV 0694 DMS JMA

(c) Attorney's (Firm Name, Address, and Telephone Number)

John Lanahan, 550 West C Street, Suite 1670, San Diego, CA 92101; (619) 237-5498

DEFENDANTS

James E. Tilton, Secretary, CA Dept of Corrections and Rehabilitation

County of Residence of First Listed Defendant

Sacramento

(IN U.S. PLAINTIFF CASES ONLY) COURT

NOTE: IN LAND CONVEYANCE CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

BY

DEPUTY

Edmund G. Brown, CA Atty General, 110 West A Street, Suite 1100, San Diego, CA 92101, (619) 645-2001

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. section 2254

Brief description of cause:

Petition for writ of habeas corpus by a person in state custody

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/16/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

149825

AMOUNT

\$5

APPLYING IFP

JUDGE

MAG. JUDGE

MS 4/16

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 149825 - MS
* * C O P Y * *
April 16, 2008
15:03:45**

Habeas Corpus

USAO #: 08CV0694-DMS
Judge.: DANA M SABRAW
Amount.: \$5.00 CK
Check#: BC3680

Total-> \$5.00

FROM: LAMARR RASHAD CROWDER